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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,962	01/21/2004	Hironobu Takizawa	17378	3889

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EXAMINER	
TOWA, RENE T	

ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/761,962	TAKIZAWA ET AL.	
	Examiner	Art Unit	
	Rene Towa	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,5,10,12,29 and 31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,5,10,12,29 and 31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is responsive to an amendment filed July 19, 2006. Claims 1-2, 4-5, 10, 12, 29 and 31 are pending. Claims 1 and 2 have been amended. No claim has been cancelled. No new claim has been added.

Claim Objections

2. The objections are withdrawn due to amendments.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brockman (US Patent No. 3,540,433).

In regards to claim 1, Brockman discloses a medical capsule retrieval device 20 comprising a catch unit 24 capable of catching the medical capsule discharged from a human body (see figs. 1-5; column 3/lines 1-5, 7-13 & 15-22).

In regards to claim 4, Brockman discloses a medical capsule retrieval device 20 wherein the catch unit 24 is a net 36 capable of retrieving or catching the medical capsule (see figs. 1-5; column 3/lines 1-5, 7-13 & 15-22).

In regards to claim 12, Brockman discloses a medical capsule retrieval device 20 wherein the medical capsule retrieval device 20 is attached to a toilet bowl 34 (see figs. 1-5).

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Jurmain et al. (US Patent No. 6,604,980).

In regards to claim 1, Jurmain et al. disclose a medical capsule retrieval device 60 comprising a catch unit 60 capable of catching the medical capsule discharged from a human body (see fig. 4a-b).

In regards to claim 2, Jurmain et al. discloses a medical capsule retrieval device wherein the catch unit 60 includes a magnet 61 arranged in the medical capsule capable of magnetically attracting one of a magnet and a magnetic device arranged in the medical capsule (see figs. 4a-b).

6. Claims 1, 4-5 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Samide (US Patent No. 6,640,355).

In regards to claim 1, Samide discloses a medical capsule retrieval device (10, 10') comprising a catch unit 20 capable of catching the medical capsule discharged from a human body (see figs. 1, 3 & 6; column 1/lines 49-55; column 2/lines 20-29 & 41-45; column 3/lines 8-13; column 4/lines 24-25 & 31-34).

In regards to claim 4, Samide discloses a medical capsule retrieval device (10, 10') wherein the catch unit 20 is a net capable of retrieving or catching the medical capsule (see fig. 6; column 4/lines 24-25).

In regards to claim 5, Samide discloses a medical capsule retrieval device (10, 10') wherein the net 20 for retrieving or catching the medical capsule is made of a magnetic material (i.e. iron) (see column 3/lines 8-13).

In regards to claim 12, Samide discloses a medical capsule retrieval device (10, 10') wherein the medical capsule retrieval device (10, 10') is attached to a toilet bowl 34 (see fig. 3).

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Samide ('355) in view of Slover et al. (US Patent No. 4,445,525).

Samide discloses a system, as described above, that teaches all the limitations of the claim except Samide does not disclose a bag to enclose together the medical capsule together with a unit of the capsule retrieval device. However, Slover et al. disclose a system comprising a bag to enclose together a sample together with a unit of the sample retrieval device (see column 4/lines 21-25). It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a system similar to that of Samide with a collection bag similar to that of Slover et al. in order to storage and transport of the collected specimen (see Slover et al., column 4/lines 21-25).

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433) in view of Slover et al. (US Patent No. 4,445,525).

Brockman discloses a system, as described above, that teaches all the limitations of the claim except Brockman does not disclose a bag to enclose together the medical capsule together with a unit of the capsule retrieval device. However, Slover et al. disclose a system comprising a bag to enclose together a sample together with a unit of the sample retrieval device (see column 4/lines 21-25). It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a

system similar to that of Brockman with a collection bag similar to that of Slover et al. in order to storage and transport of the collected specimen (see Slover et al., column 4/lines 21-25).

10. Claims 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (US Patent No. 6,632,175).

In regards to claim 29, Marshall teaches a retrieval method for retrieving a medical capsule, comprising a step of catching the medical capsule discharged from within the human body (see fig. 2; column 3/lines 58-63) except except Marshall does not explicitly teach the step of catching the medical capsule with a catch unit.

However, the Examiner takes official notice that since Marshall teaches a method wherein a reusable medical capsule is retrieved after discharge from a human body, the method inherently includes the step of catching the medical capsule discharged from within the human body using a catch unit; wherein the catch unit may be a glove, medical prongs, etc. since the steps of Marshall require, inter alia, "discharging the capsule...through the rectum" (see Marshall, fig. 2; column 1/lines 44-46; column 3/lines 58-63). It would be inconceivable to assume that a medical practitioner and/or patient would retrieve the medical capsule with his/her bare hands after it had been discharged from a rectum (i.e. from the patient's excrement).

As such, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a method similar to that of Marshall with a catch unit step in order to more explicitly disclose the sanitary condition of the catching step.

In regards to claim 31, Marshall discloses a retrieval method for retrieving a medical capsule, as described above, that teaches all the limitations of claim except Marshall does not explicitly teach the further step of washing the medical capsule.

The Examiner takes official notice that since Marshall teaches a method wherein a reusable medical capsule is retrieved after discharge from a human body, the method inherently includes the step of washing the medical capsule with a washing unit since the steps of Marshall require, inter alia, "swallowing the capsule...through the mouth" and "discharging the capsule...through the rectum" (See Marshall, fig. 2; column 1/lines 44-46; column 3/lines 58-63).

As such, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide a method similar to that of Marshall with a washing step in order to more explicitly disclose the sanitary condition of the capsule at the time of swallowing.

Response to Arguments

11. Applicant's arguments with respect to the Marshall reference have been fully considered but they are not persuasive. Applicant argues that Marshall does not teach the use of a catch unit for catching a medical capsule upon discharge from within the human body. This argument has been considered and has not been deemed persuasive.

In regards to the Applicant's argument that Marshall does not teach the use of a catch unit for catching a medical capsule upon discharge from within the human body, the Examiner respectfully disagrees. It is generally noted that the limitation "catch unit"

does not provide a structural limitation, per se, to the medical retrieval device. Since a "catch unit" is construed as anything capable of catching a medical capsule discharged from within a human body; the "catch unit" may well be construed as a unitary device such as a glove, a bag, rack, a bowl, etc. or complementary unit that cooperates with another unit in a key-and-lock fashion such as a pin, a hook, a saw-tooth indented object, a stick, etc. As such, in regards to the Applicant's argument that Marshall does not teach the use of a catch unit for catching a medical capsule upon discharge from within the human body, the Examiner submits the method of Marshall, which calls for a reusable capsule, inherently includes the step of using a catch unit (i.e. a glove) to catch the capsule since the steps of Marshall require, inter alia, "discharging the capsule...through the rectum" (see Marshall, fig. 2; column 1/lines 44-46; column 3/lines 58-63). It would be inconceivable to assume that a medical practitioner and/or patient would retrieve the medical capsule with his/her bare hands after it had been discharged from a rectum (i.e. from the patient's excrement).

In view of the foregoing, the rejections over Marshall are maintained.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,412,819 to Matusewicz et al. discloses disposable sample collection device.

US Patent No. 4,521,520 to Jacke discloses method for in house occult blood testing.

US Patent No. 4,309,782 to Paulin discloses device for collecting fecal specimens.

US Patent No. 4,215,443 to Babik discloses toilet anti-splash and silencer device.

US Patent No. 2,840,826 to Ebbesen et al. discloses a stool sampling apparatus.

US Patent No. 3,775,777 to Roberts, Jr. discloses a stool specimen test kit.

US Patent No. 3,588,921 to Nagel discloses a toilet mounted disposable stool specimen collector.

US Patent No. 3,136,720 to Baerman discloses a magnetic filter.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rene Towa whose telephone number is (571) 272-8758. The examiner can normally be reached on M-F, 8:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RTT

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